

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

CSX TRANSPORTATION, INC.)
)
 PLAINTIFF,)
)
 V.)
) CASE NO. 1:21-cv-2859-JMS-MJD
 ZAYO GROUP, LLC,)
)
 DEFENDANT AND)
 THIRD-PARTY PLAINTIFF,)
)
 V.)
)
 MILENIUM INC., CROSSROADS)
 COMMUNICATIONS SOLUTIONS, LLC,)
 BASELINE COMMUNICATIONS, NXC,)
 LLC, BSM GROUPS, LLC, JDH)
 CONTRACTING, INC, OCM ENGINEERING,)
 LLC, ON POINT CONSTRUCTION)
 MANAGEMENT, INC., PLB ENGINEERING,)
 LLC, SPECTRUM ENGINEERING, LLC, AND)
 TESCO COMPANY, INC.,)
)
 THIRD-PARTY DEFENDANTS.)
)

NINETEENTH JOINT STATUS REPORT ON DISCOVERY

The parties hereby provide the following Joint Status Report on Discovery pursuant to the Court's Order at Doc. 60.

Detailed Description of All Discovery Completed Since Last Status Report.

On July 27, Zayo produced documents.

On July 31, CSXT served the third party production of Western Utility.

On July 31, Zayo served responses to Spectrum's First set of Discovery Requests.

On August 1, CSXT made its supplemental response to ROG 1 and produced documents.

On August 2, Zayo responded to CSXT's Interrogatory 18 with an accompanying production.

On August 3, Zayo produced documents.

On August 4, Zayo served its Second Supplemental Initial Disclosures and supplemented its production in relation to CSXT's Interrogatory 18.

On August 7, CSXT served the Rule 902(11) declaration of Western Utility.

On August 10, CSXT produced documents.

On August 10, Zayo produced documents in response to JDH's discovery requests.

On August 10, Crossroads, Tesco, JDH, OnPoint, PLB, and OCM responded to Zayo's discovery requests.

On August 10, 2023, Crossroads provided its responses to Zayo's Second Set of Discovery Requests.

Baseline served a written response to Zayo's Second Request for Production on August 11. Baseline anticipates providing responsive documents within two weeks.

On August 11, Zayo made its Third Supplemental Initial Disclosures.

On August 11, CSXT responded to Zayo's Fifth Set of Requests for Production.

On August 11, 2023, Spectrum Engineering LLC's responded to Zayo's Second Set of Discovery Requests.

On August 11, CSXT responded to OCM's Requests for Admission.

On August 11, CSXT responded to OnPoint's Requests for Admission.

On August 11, CSXT responded to Zayo's Sixth set of Requests for Production.

On August 11, CSXT responded to Zayo's Second Requests for Admission.

On August 11, CSXT supplemented its response to Zayo's First Requests for Production

On August 11, CSXT responded to Zayo's Fourth Interrogatories.

On August 11, CSXT supplemented its response to Zayo's Fourth Requests for Production.

On August 11, CSXT supplemented its responses to Zayo's Interrogatory 5, 6, 7, 9, and 10.

On August 11, Zayo responded to CSX's Ninth Requests for Production.

On August 11, Zayo responded to CSX's Eighth Interrogatories.

On August 11, Zayo supplemented its response to CSX's Fifth Interrogatories.

On August 11, Zayo supplemented its response to CSX's Request for Admission 6.

On August 11, Zayo supplemented its response to CSX's Interrogatory 8.

On August 11, Zayo supplemented its response to CSX's Seventh Interrogatories.

On August 11, Zayo supplemented its response to CSX's Interrogatory 1.

On August 11, Baseline and Spectrum responded to Zayo's discovery requests. Baseline anticipates providing documents responsive to Zayo's requests within two weeks.

On August 14, Zayo re-produced documents previously produced in response to Spectrum's discovery requests.

On August 21, Zayo supplemented its responses to Baseline's discovery requests.

On August 22, Baseline requested that Zayo further supplement its responses by specifying the documents in its supplemental productions that relate to Baseline.

On August 22, Zayo provided Baseline with a list of documents that relate to Baseline.

Detailed description of all discovery presently scheduled or pending, including the due dates for any pending discovery requests and the scheduled dates for any depositions, and the identity of the counsel responsible for completing such discovery.

Due Date	Item	Counsel Responsible
September 25	Deposition of Hernandez	CSXT
September 26	Deposition of Coscia	CSXT
September 27	Deposition of D'Costa	CSXT
September 28	Deposition of Kramer	CSXT
October 2	30(b)(6) of Zayo	CSXT
October 3	Deposition of Kali	CSXT
October 4	Deposition of Noto	CSXT

Zayo has filed a motion for protective order to prevent Mr. Noto's deposition, as well as a motion for protective order relative to one topic for the Ruel 30(b)(6) deposition. Zayo is working to confirm availability of its witnesses for the above-listed dates and intends to confirm whether it can agree to these deposition dates by the end of the week. Not all witnesses reside in the state of Colorado and accordingly, the Parties require additional conferral to account for travel arrangements.

A detailed description of any discovery disputes presently pending, including the status of the resolution of the dispute and the identity of the counsel responsible for resolving the dispute.

On August 18 and again on August 21, CSXT raised issues with Zayo's response to Interrogatory 10(d). The interrogatory was served on April 7, 2023, and the answer was served August 11, 2023. CSXT requires the full answer before September 5 to properly prepare its damage methodologies and to prepare for the depositions. CSXT has requested a meet and confer with Zayo as soon as possible. CSXT will bring the issue to the Court's attention on or before Friday of this week unless a Zayo commitment to a September 5 supplement is obtained.

On August 22, CSXT raised issues with Zayo's responses to Interrogatories 12 and 17, requesting a meet and confer as soon as possible. CSXT will bring the issue to the Court's attention on or before Friday of this week unless a Zayo commitment to a September 5 supplement is obtained.

Zayo is reviewing the voluminous documents and discovery responses it received from CSXT during the final week of discovery, and expects to have further conferral with CSXT regarding deficiencies therein.

The Court has set a briefing schedule on other pending disputes.

CSXT and Zayo are negotiating privilege disputes.

The parties continue to evaluate other areas of dispute.

A detailed description of all discovery that is planned to be completed within the 28-day period following the report, including the identity of the counsel responsible for completing such discovery.

See above chart.

A description of all known discovery remaining to be completed in this matter, including a proposed timetable for the completion of such discovery and the identity of the counsel responsible for completing such discovery.

CSXT will serve damage interrogatories.

Expert discovery will need to proceed along the schedule established in the Case Management Plan.

Any other discovery issues any party believes should be brought to the attention of the Court so as to avoid any further delays in the completion of discovery in this matter.

None

Dated: August 22, 2023

/s/ Matthew T. Ciulla
Robert D. MacGill (9989-49)
Matthew T. Ciulla (34542-71)
MACGILL PC
156 E. Market St.
Suite 1200
Indianapolis, IN 46204
Telephone: 317-721-1253
Robert.MacGill@MacGillLaw.com
Matthew.Ciulla@MacGillLaw.com

Attorneys for Plaintiff

/s/Emily Mendoza
Pfenne Peter Cantrell
April M. Jay
KIGHTLINGER & GRAY, LLP
211 North Pennsylvania Street
One Indiana Square, Suite 300
Indianapolis, IN 46204
(317) 638-4521
Pcantrell@k-Glaw.Com

Tess Hand-Bender
Emily Mendoza
PRO HAC VICE
Davis Graham & Stubbs LLP
1550 17th Street Ste 500
Denver, CO 80202
USA
303-892-7419
Email:Emily.Mendoza@dgslaw.Com

Attorneys for Defendant

/s/ Georgianna Q. Tutwiler
Mark M. Holdridge
Georgianna Q. Tutwiler
HUME SMITH GEDDES GREEN & SIMMONS
54 Monument Circle 4th Floor
Indianapolis, IN 46204
317-632-4402 Email:Gquinn@humesmith.Com

Counsel for Milenium

/s/ B. Scott Jones

B. Scott Jones
Logan Hughes
REMINGER CO., LPA
730 West Main Street Suite 300
Louisville, KY 40202
502-584-1310
Fax: 502-589-5436
Email: Sjones@reminger.com

Counsel for Crossroads

/s/ Thomas A. Pastore

Thomas A. Pastore
THOMAS PASTORE, PC
P.O. Box 40939
Indianapolis, IN 46240
(317) 509-4306
Email: tpastore@pastorelaw.com

JDH CONTRACTING, INC

[consent not timely received]

Charles Schroeder Smith
SCHULTZ & POGUE LLP
520 Indiana Avenue
Indianapolis, IN 46202
317-262-1000
Fax: 317-262-9000
Email: csmith@schultzpoguelaw.com

OCM ENGINEERING, LLC, ON POINT CONSTRUCTION MANAGEMENT, INC., PLB
ENGINEERING, LLC

/s/ David E. Bailey

David E. Bailey
FLETCHER VAN GILDER, LLP
436 E. Wayne Street
Fort Wayne, IN 46802
(260) 425-9777
Fax: (260) 424-9177
Email: bailey@fvglaw.com

BASELINE COMMUNICATIONS, NXC, LLC

[consent not timely received]

Paul J. Cummings
HENN HAWORTH CUMMINGS & PAGE
1634 W. Smith Valley Road
Suite B
Greenwood, IN 46142
(317) 885-0041
Fax: (888) 308-6503
Email: Paul.Cummings@HHCPlaw.com

TESCO COMPANY, INC.

/s/ Pamela A. Paige

Bradford Schane Moyer
Pamela A. Paige
Scott H. Sirich
PLUNKETT COONEY (Indianapolis)
201 N. Illinois Street
South Tower, Suite 1600
Indianapolis, IN 46204
(317) 964-2738
Fax: (248) 901-4040
Email: ppaige@plunkettcooney.com
Email: bmoyer@plunkettcooney.com

SPECTRUM ENGINEERING, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on August 22, 2023 on all counsel of record by virtue of the Court's CM/ECF System.

/s/Matthew T. Ciulla